

## EXHIBIT 466

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - -  
IN RE: NATIONAL :  
PRESCRIPTION : MDL No. 2804  
OPIATE LITIGATION :  
\_\_\_\_\_ : Case No.  
THIS DOCUMENT RELATES : 1:17-MD-2804  
TO ALL CASES : Hon. Dan A. Polster

- - -  
Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

- - -  
Videotaped deposition of TOM NAMETH, held at  
the offices of Cavitch, Familo & Durkin,  
1300 East Ninth Street, Cleveland, Ohio, commencing at  
9:03 a.m., on the above date, before Carol A. Kirk,  
Registered Merit Reporter and Notary Public.

- - -  
  
  
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1 anomaly associated with a controlled substance,  
2 in terms of size, would that be something that  
3 would constitute a suspicious order?

4 A. Not necessarily. It would be  
5 something that would jump out of the page at you  
6 and then you'd have to look into that specific  
7 reason why that -- there was an increase from  
8 month to month or that particular month.

9 So it, not necessarily, would make  
10 it a suspicious order. It would jump out of the  
11 page. Then there would be follow up to  
12 determine whether it was suspicious or not.

13 Q. Okay. So if you were looking at  
14 this one month -- the monthly -- what do you  
15 want to call this report for the sake of the  
16 transcript? Do you have a preference as to what  
17 you call it?

18 A. Twelve-month order. I mean,  
19 12-month --

20 Q. The 12-month report?

21 A. Yeah, I guess.

22 Q. Okay. And when we say that, we'll  
23 agree that we're referring to the one that's  
24 printed monthly and reflects a rolling 12-month

1 average.

2 Is that fair?

3 A. Right. Yes.

4 Q. Okay. So if you were looking --

5 and I assume part of your responsibilities were

6 to review this 12-month report, correct?

7 A. Yes.

8 Q. Was anybody else responsible for  
9 reviewing this 12-month report on a monthly  
10 basis?

11 A. If I was on vacation, the VP of  
12 pharmacy would do that --

13 Q. Okay.

14 A. -- but it would only be between  
15 the two of us.

16 Q. Okay. And you said that you would  
17 use that report to see if anything jumped out at  
18 you, right?

19 A. I would use the report to make the  
20 next determination of whether we had to do  
21 something else besides necessarily what had to  
22 be -- there was another form that we used that  
23 we sent out to a store to ask them the reasons  
24 why of the increase.

1                   Q.        Okay. So let's say Store Number 1  
2       has a 12-month rolling average of five bottles  
3       of hydrocodone per month, fair?

4                   A.        Yes.

5                   Q.        Okay. And then you get a report  
6       on January 1st showing that in December they  
7       ordered 15 bottles of hydrocodone.

8                   A.        Yes. Okay.

9                   Q.        And so would that appear on the  
10      report?

11                  A.        Yes.

12                  Q.        Okay. And would that jump out at  
13      you?

14                  A.        Yes.

15                  Q.        Was there any policy and procedure  
16       at DDM that told you what should jump out at  
17       you?

18                  A.        It was discussed that if we  
19       determined that it was a policy -- not a policy.  
20       We determined that the volume was higher than  
21       normal, then we would follow up with a report to  
22       the store.

23                  Q.        Okay. And so it sounds like there  
24       wasn't --

1                   A.         In other words, if they're going  
2         up from two bottles to four bottles, that, not  
3         necessarily, would -- it's a higher volume than  
4         normal. And that's why we had to look at that  
5         as an individual, because we had to determine  
6         what store we're looking at.

7                   If you're looking at just a  
8         number, a black and white number, it really  
9         doesn't tell you much. It tells you a volume,  
10       but it doesn't tell you anything besides that.  
11       So that's why we had to look at it and then  
12       determine a reason why, and that reason then  
13       would go out to the stores. We'd ask the  
14       question and then they would have to respond.

15                  Q.         Okay. And I appreciate all that.  
16       What I'm really focused on right now is, did you  
17       ever receive any training or was there any  
18       policies and procedures that said, "All right,  
19       Tom, if you see this report and this store that  
20       was ordering five has ordered, you know -- if it  
21       increases by X percentage, then you have to do  
22       something."

23                  Was there anything like that?

24                  A.         Well, as being a retail pharmacist

1 for 15 years probably before, you know, I was  
2 very well aware of what stores -- the  
3 functionalities of stores do, how their orders  
4 were done, and they gave you a background.

5 Now, we also -- when I came on  
6 board, it was verbally dictated to me that this  
7 is what we should do if you have -- if you feel  
8 that this is higher than normal, then we should  
9 follow up. So that's what we did.

10 Q. Okay. So what I'm hearing is --  
11 tell me if I'm wrong -- there was no set policy  
12 and procedure that required you to follow up  
13 based on a particularly -- like a percentage  
14 increase? There was no percentage that says,  
15 all right, in this instance, you have to follow  
16 up with the pharmacist, correct? It was a  
17 judgment call that you got to make?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. And so on any given month, let's  
22 take that store we just talked about that had an  
23 average of five bottles, correct? Okay?

24 A. Yes.

1                   Q.     Is there a specific number where  
2     for Tom, an increase that would jump out at you  
3     where you'd say, "I need to follow up"?

4                   A.     Well, the report itself, I think,  
5     would populate once that -- that number would,  
6     say, hit a threshold. I think the threshold of  
7     that report, if I don't -- if I remember  
8     correctly, was about 90 -- 90 percent,  
9     99 percent or so. So when it would populate in  
10   the report, in your case, that would have to be,  
11   what, ten bottles?

12                  Q.     Mm-hmm.

13                  A.     And so in my opinion, that would  
14   be a substantial increase. So we would have to  
15   understand why it went from five to ten. So  
16   that would -- that would then generate a report  
17   on my side out to the stores to ask them that  
18   question.

19                   Now, there's some other things  
20   involved. If a store was -- you know, had a  
21   clinic that opened up next store, Cleveland  
22   Clinic was populating, you know, individual  
23   satellites around the suburbs of Cleveland quite  
24   rapidly, and so there are things that we knew --

1       that's why it's important for us to have  
2       somebody look at it rather than just take it by  
3       its value on a piece of paper.

4           Q.     Okay. So my question was  
5       specific. Was there a certain number that would  
6       cause you to do follow up? And I appreciate all  
7       the other things you told me. We'll be here  
8       until Friday if --

9           A.     Okay.

10          Q.     I appreciate the information.

11          A.     I'm just trying to explain what we  
12       do, but you know.

13          Q.     Yeah. And I don't want anybody --

14          A.     I understand.

15          Q.     -- to be mad at me later --

16          A.     No. I understand.

17          Q.     -- when it's 7:00 and we're still  
18       here. But -- you know, so I -- if you can  
19       listen to my question. I'm going to try and ask  
20       very specific pointed questions for what I need,  
21       and if you can try and answer the question.

22       Certainly you're welcome to provide any  
23       additional information you want, but I don't  
24       want to keep you here all day.

1                   So let me ask this. Okay. So  
2 this report's printed monthly, right?

3                   A.     Correct.

4                   Q.     Okay. Does it have all DDM's  
5 stores on it?

6                   A.     Yes, it does.

7                   Q.     And it's broken up by store?

8                   A.     Yes.

9                   Q.     Okay. Does it include just  
10 controlled substances or other items?

11                  A.     Yes.

12                  Q.     Just controlled substances. Okay.

13                  Do all controlled substance orders  
14 appear on this report or just the ones that  
15 exceed the 99 percent?

16                  A.     They can all appear on there.

17       Now, they -- I think that once they're printed,  
18 only the 99 percent were. I don't -- I think  
19 it's only the 99 percent.

20                  Q.     Okay. So let's say -- let's use  
21 our example again, and I don't remember what  
22 store it was. We'll say Store 1 so we can  
23 remember. So Store 1 has an average of five  
24 bottles a month, right?

1 A. Yes.

2 Q. This feels like math class,  
3 doesn't it?

4 A. Yeah.

5 Q. Okay. So they're averaging five a  
6 month and then all of a sudden in December they  
7 order nine, right?

8 A. Yes.

9 Q. Okay. That wouldn't show up on  
10 the report, would it?

11 A. Probably not.

12 Q. Okay. So then we're at nine, and  
13 then let's say the next month they order 16.  
14 That wouldn't show up on the report either,  
15 would it?

16 A. Well, I'd have to look and see.

17 It's a rolling average, so ...

18 Q. Okay. So the December amount --

19 MR. JOHNSON: Let him finish.

20 Q. Yeah. Go ahead.

21 A. I don't know. I'd have to look  
22 at -- and we'll do the math, I guess, and see if  
23 a rolling average from month to month when  
24 you're going back 12 months, I would have to

1 understand the math.

2 Q. I gotcha. But you'd agree that  
3 each month they could increase 98 percent over  
4 what their last 12-month average was and it  
5 wouldn't show up on the report; is that correct?

6 A. Well, it's an increment -- when  
7 you're looking at it on a month to month on a  
8 rolling 12, I don't -- when you average in the  
9 whole year, I don't think it -- I'm not quite  
10 sure. I'd have to look at the math, you know,  
11 and if it pops on that report.

12 Q. Okay. So my question was, I'm  
13 trying to frame my question in a way that --

14 A. Well, I -- yeah. You're trying --

15 Q. Let me ask --

16 MR. JOHNSON: Let him ask you --  
17 let him --

18 Q. So my question is: If you  
19 could -- that a store could increase its orders  
20 every month, right?

21 A. Mm-hmm.

22 Q. Under that formula just generally  
23 over time and without having any of those  
24 ordering patterns show up on that report,

1       correct?

2                     A.       If you're only looking at a month  
3       to month, you're correct in your statement that  
4       you wouldn't see that. But when you throw in  
5       the rolling average of 12, I don't know if that  
6       skews that number.

7                     Q.       Well, let's say in month 12 you  
8       increase your orders by 98 percent, all of a  
9       sudden your 12-month average went up, didn't it?

10                  A.       Yes.

11                  Q.       And so then you could then  
12       increase again by 98 percent, which would then  
13       again bring your --

14                  A.       I don't think on a monthly -- each  
15       month that would -- you could do a 90 -- or  
16       100 percent, whatever it is, 99 percent every  
17       single month and increase that because it's a  
18       rolling 12. It looks back -- you know, it's  
19       slow -- it's a slow progression.

20                  Q.       Right. So the January before  
21       rolls off when the --

22                  A.       Okay. Yes. Yes.

23                  Q.       -- most recent January goes on.

24                  A.       Mm-hmm.

1 (Reporter clarification.)

2 A. I'm sorry.

3 Q. The -- yeah. We talked over  
4 there, each other.

5 So your January from last year  
6 rolls off the report when your January from this  
7 year gets added?

8 A. Yes.

9 Q. Okay. And so if your January from  
10 last year was five bottles and your January this  
11 year was ten, your average goes up, right?

12 A. Yes.

13 Q. Which then raises the amount that  
14 you could order in February without that amount  
15 showing up on your report, correct?

16 A. I'm taking your word for it.

17 Q. Okay. I mean --

18 A. Without doing the math, but yes.

19 Q. Right. Well, and I haven't given  
20 you any specific math. And it's your report.  
21 So I'm just trying to understand how this would  
22 work and how things would show up.

23 A. Yeah.

24 Q. Okay. How often would stores show

1 up on this report?

2 A. They would show up on the report  
3 with some frequency. It depends on if it's  
4 cough and cold and flu season, then you're going  
5 to see more cough syrups report -- on the  
6 report. But how often a particular store?

7 Q. I guess what I want to know is,  
8 Tom goes into work on January 1 -- I'm sorry for  
9 calling you Tom. Mr. Nameth.

10 A. That's fine.

11 Q. Mr. Nameth goes into work on  
12 January 1. The report prints out. It lands on  
13 your desk. Are all 74 stores on that report --

14 A. Yeah.

15 Q. -- showing stuff that's exceeded  
16 the 99 percent rolling average?

17 A. All stores are on the report but  
18 there could be blank pages that they don't show  
19 anything.

20 Q. Okay. So if no stores' order  
21 history trigger this reporting system that had  
22 been set up, they would just have the store but  
23 nothing underneath?

24 A. Right.

1 Q. And how common was it for the  
2 store to be listed with nothing underneath it?

3 A. I would say it was not that common  
4 for having a store having nothing. So we had to  
5 review each -- you know, it was fairly time  
6 consuming to do, but ...

7 Q. Let's talk about opioids.

8 A. Yeah.

9 Q. When would this report print?  
10 Would it be the first of the month?

11 A. Yes.

12 Q. Okay. And would that be the thing  
13 you'd expect to spend that day doing, looking at  
14 that report?

15 A. Generally, yeah. I mean, it was  
16 something that took some time.

17 Q. Okay. How many days would you  
18 spend on it?

19 A. It depends on how much time I had.  
20 It could be several hours to, you know, a day  
21 maybe, looking at it.

22 Q. Okay. Would it ever take you more  
23 than a day to go through that report and do  
24 whatever due diligence you needed to do?

1 A. Not that I recall.

2 Q. Okay. And how many stores would  
3 you say on average would show up on that report  
4 regarding opioid purchases?

5 A. Strictly opioids?

6 Q. Correct.

7 A. There might be a dozen stores.

8 Q. Okay. So 12 of the 74 stores  
9 would appear on average, just generally on a  
10 given month showing that their orders for the  
11 last month for opioids were greater than  
12 99 percent of their 12-month rolling average; is  
13 that fair?

14 A. Yeah. Now, that number -- when we  
15 got towards 2012, '13, '14, those numbers seems  
16 to -- seemed to decrease.

17 Q. Do you know why that was?

18 A. I do not know.

19 Q. Did you ever look into why the  
20 amount of times a store appeared on that report  
21 went down around that time frame?

22 A. No.

23 Q. Okay. So you noticed a marked  
24 decline in stores showing up on your suspicious

1 order monitoring report and you didn't do  
2 anything to figure out why?

3 A. If they decreased?

4 Q. Correct.

5 A. No, I did not.

6 Q. Okay. Do you have any idea today  
7 why fewer stores were showing up on your  
8 suspicious order monitoring report starting in  
9 2012?

10 A. No.

11 Q. Are you aware that that time frame  
12 more or less coincides with when this opioid  
13 crisis really kind of got blown out of  
14 proportion? Excuse me. Blew up is the word I  
15 was looking for.

16 A. I think that it was more in the  
17 news and there were some policies that the State  
18 Board of Pharmacy made -- and, you know, I'm --  
19 again, I'm not quite sure of the year, but there  
20 was some changes to the board of how many  
21 opioids you could dispense at a particular time,  
22 so ...

23 Q. Do you know what those rules are?

24 A. Quantities, you know -- actually,

1       the big thing was when hydrocodone went to  
2       Schedule II, but now you're talking, what, I  
3       think in '14. So prior to that, not really. I  
4       don't know why that would have been.

5           Q.     So you told me that you thought  
6       about a dozen stores would show up regarding  
7       opioids on a monthly basis on that report. Was  
8       that prior to 2012 or was that --

9           A.     Yeah. I think that -- that was  
10      probably around '12, '13. Prior to that, it  
11      might have been slightly more on -- strictly on  
12      the opioids.

13          Q.     Okay. And you would spend upwards  
14      of a day looking into that and doing due  
15      diligence to determine whether that ordering  
16      pattern was suspicious?

17          A.     I don't know if I would say  
18      upwards of a day.

19          Q.     Okay. So --

20          A.     A portion of the day.

21          Q.     Okay. And what would that -- what  
22      would the time that you spent -- what would you  
23      spend that time doing?

24          A.     Reviewing each particular order

1       that would show on the report, looking at what  
2       store it was, determining to the best of my  
3       knowledge why that would be, and then sending  
4       out reports to the store. You know, generating  
5       another report to the store to ask them, you  
6       know, why they had an increase.

7           Q.     Okay. Did you always send the  
8       form to the store?

9           A.     I'm sending the forms and it would  
10      always go to the store, yes.

11          Q.     Okay. So any time that a store  
12      showed up on that report, you would send a form  
13      asking them to explain why their ordering had  
14      increased?

15          A.     No.

16          Q.     Okay.

17          A.     I mean, that's when I used a  
18      judgment.

19          Q.     So this report would populate  
20      automatically, correct?

21          A.     Yes.

22          Q.     And you would get the report,  
23      correct?

24          A.     Right.

1 Q. And you were primarily responsible  
2 for reviewing it, correct?

3 A. Yes.

4 Q. And you'd spend a couple hours on  
5 the day that it populated reviewing it, right?

6 A. Right.

7 Q. And depending upon what popped out  
8 at you, you would then decide whether to send a  
9 form to the store asking for more information  
10 about why --

11 A. Well, you know, if the volume --

12 Q. Hold on. You would then send a  
13 form that would ask them to explain why their  
14 orders increased, correct?

15 A. Yes, but I would send a form -- if  
16 the quantities went from one to two or three, I  
17 generally would not send a report. If the  
18 quantities went from five to ten, that would  
19 generate a report, so ...

20 Q. Why would five to ten generate a  
21 report to the store and not one to three?

22 A. Well, when you're looking at ups  
23 and downs in the marketplace and all the  
24 variables, you know, when you're talking about

1 increase by one bottle, so to speak, that  
2 necessarily would not, in my mind, generate a  
3 report that would lead to a possible suspicious  
4 order.

5 Q. Okay. That was a judgment call  
6 you made, right?

7 A. Yes.

8 Q. And what was the purpose of the  
9 report that you would send to the stores?

10 A. Well, it was twofold, in my  
11 opinion anyway. One was to see why the  
12 increase. The second was to see, after they do  
13 the math of -- say, like they had an increase in  
14 the number of volume of scripts, I also wanted  
15 to know whether or not the remaining bottles  
16 were on the shelf, or if there was some  
17 diversion where someone was -- you know, are we  
18 missing bottles? Because if they had ordered  
19 ten bottles and five were used for filling  
20 scripts, they better have five on the shelf, so  
21 to speak.

22 Q. Did you ever send out one of those  
23 forms and get a response back that, you know,  
24 we're missing two bottles and so we had to

1 replace them?

2 A. Not that I recall.

3 Q. Okay. Do you ever recall any  
4 issues regarding missing controlled substances?

5 A. At store level?

6 Q. Correct.

7 A. There have been situations at  
8 store level where there have been missing  
9 controlled substances.

10 Q. Is that a common occurrence?

11 A. Not really.

12 Q. Okay. So it was uncommon?

13 A. I would say.

14 Q. Do you think DDM did a good job of  
15 preventing diversion at its store level?

16 A. I think we did.

17 Q. Okay. All right. So let's just  
18 recap this because I want to make sure I fully  
19 understand. So at some point in the '90s, DDM  
20 designed this report that would generate  
21 monthly, right?

22 A. Yes.

23 Q. Okay. And the monthly report had  
24 every store on it, right?

1 A. Yes.

2 Q. And it would show the rolling  
3 12-month average for -- well, it would reflect  
4 the rolling -- strike that.

5 The formula used to decide whether  
6 an ordering history would show up for a given  
7 store was whether it exceeded the prior 12-month  
8 rolling average by 99 percent, right?

9 A. Yes.

10 Q. Otherwise nothing would show up,  
11 right?

12 A. Right.

13 Q. Okay. And so this report, did it  
14 get e-mailed to you? Was it printed?

15 A. Printed.

16 Q. Okay. So this report comes out  
17 and you go and you grab it and then you look at  
18 it, right?

19 A. Correct.

20 Q. And you spend a couple hours and  
21 you look at all the orders or the ordering  
22 history that shows up. And you'd agree that  
23 we're talking about ordering history, right, not  
24 necessarily a specific order?

1 A. Say again.

2 Q. So, like, for example, the store  
3 orders -- the stores made orders more than once  
4 a month, right?

5 A. Yes.

6 Q. Okay. And so the report would  
7 reflect what was ordered the prior month, but it  
8 wasn't a -- it wasn't showing specific orders,  
9 it was showing the total orders?

10 A. Yes.

11 Q. Okay. And so you would then look  
12 at that and you would make a judgment call as to  
13 whether you needed to follow up with the store  
14 to get more information, correct?

15 A. Yes.

16 Q. Okay. And if you decided that a  
17 particular change was large enough, based on  
18 your own judgment, then you would send a form to  
19 the store asking for more information, correct?

20 A. Correct.

21 Q. Okay. And what -- let's say we  
22 had that store where they averaged five and now  
23 they've ordered ten the last month, what would  
24 be a satisfactory explanation for why they

1 increased their order?

2                   A.       If the number of scripts went up,  
3 if the number of -- the volume of controlled  
4 substances that were dispensed went up, then  
5 that would equate to a reason why their volume  
6 went up. But then, again, on the same token,  
7 there was lots of times when I would follow up  
8 if I wasn't -- if that wasn't a complete answer,  
9 I would make sure that the bottles were still on  
10 the shelf.

11                   Now, so there were several times  
12 where the pharmacist would increase their order  
13 because they were running a little bit low  
14 previously. These are controlled drugs for  
15 pain. We don't want to run out of a pain  
16 medication that someone needs immediately. You  
17 can't tell them, they're going to come in two  
18 days later for their pain medicine.

19                   So we would -- there were a lot of  
20 times when the pharmacist would -- might order  
21 heavier, you know, than normal, just so they  
22 wouldn't run out, if they were getting low.

23                   Q.       And was that okay by you?

24                   A.       Yes, as long as I knew where they

1       were.

2                     Q.        Okay. So if a pharmacy averaged  
3       five and then they ordered ten, they'd show up  
4       on the report, right?

5                     A.        Yes.

6                     Q.        And then you would decide whether  
7       or not that warranted any follow up, right?

8                     A.        Yes.

9                     Q.        Okay. And if the pharmacist  
10      filled out this form and said, "Look,  
11      Mr. Nameth, you know, we had more prescriptions  
12      this month we had to fill and that's why we had  
13      to order twice as much," that would be a  
14      sufficient explanation?

15                  A.        As long as the volume would equate  
16      to that, yes.

17                  Q.        Okay. And what would they need to  
18      do to show you that the volume equated to the  
19      increase in ordering?

20                  A.        They would either -- they would  
21      either send a report of the actual scripts. If  
22      they didn't send a report of the actual scripts,  
23      if they determined that they had an increase in  
24      volume or whatever of particular scripts, they

1       would have an explanation of why, and that could  
2       have been followed up -- well, you know, a lot  
3       of times it was, was how many bottles are left  
4       on your shelf. Because the last thing we wanted  
5       is to have somebody, you know, have some  
6       diversion going on at store level.

7           Q.       Okay. And so would it be fair to  
8       say that the purpose of that report and your due  
9       diligence was to make sure they weren't  
10      replacing opioids, for example, with some that  
11      had been diverted at the store level like  
12      through theft; would that be fair?

13          A.       What do you mean by "replacing"?  
14      I didn't understand that.

15          Q.       So it sounds -- you indicated to  
16      me that an appropriate explanation for an  
17      increase in orders that would show up on that  
18      report would be that there were more  
19      prescriptions, right?

20          A.       Yes.

21          Q.       And then you said to me that you  
22      were concerned with making sure that they  
23      weren't replacing bottles that may be -- were  
24      diverted through theft or some other means at

1 the store level, correct?

2 A. I'm getting hung up on

3 "replacing." You know, what --

4 Q. Well, tell me what you mean. I'm  
5 just trying to understand what you're telling  
6 me. That's all.

7 A. Okay. I wanted to make sure that  
8 the bottles were not diverted out of the store  
9 through theft, that they have them on the shelf.

10 Q. Okay.

11 A. So --

12 Q. And so you wanted to make sure  
13 that the increased order wasn't sort of --  
14 wasn't a way of compensating for a bottle that  
15 disappeared; is that fair?

16 A. Yes.

17 Q. Okay. What other ways that you  
18 understand that a -- let's say a bottle of  
19 opioids could be diverted out of a DDM store?

20 A. What other ways?

21 Q. Correct.

22 A. Well, possible theft, but other  
23 possible ways? Maybe through a delivery. Maybe  
24 there was a driver that decided to, you know,